

**Nov 08, 2019**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIA ANDREA GONZALEZ,

Defendant.

No. 1:18-CR-02005-SAB

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
A NEW TRIAL**

The Court held a hearing in the above-captioned matter on November 6, 2019, in Yakima, Washington. Defendant was present in the courtroom in the custody of the U.S. Marshals. She was represented by Tim Nguyen and Troy Lee. The Government was represented by Ian Garriques. At the hearing, Defendant presented her arguments in support of her Motion for a New Trial, ECF No. 184. Defendant argues that she is entitled to a new trial based on the U.S. Supreme Court's holding in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). At the hearing, the Court orally denied Defendant's motion. This Order memorializes the Court's oral ruling and explains the Court's reasoning.

**Background**

On January 18, 2018, the Government filed an Indictment charging Defendant with possession of methamphetamine with intent to distribute, possession of a firearm in the furtherance of a drug trafficking crime, and felon in

1 possession of a firearm and ammunition. ECF No. 1. On March 13, 2018, the  
2 Government filed a Superseding Indictment, adding two charges of possession of  
3 heroin with intent to distribute. ECF No. 38. The case went to trial before a jury.

4 Relevant here, at the close of trial the jury was provided Instruction 17 on  
5 Court 4 of the Indictment. Instruction 17 provided that in order to be convicted of  
6 felon in possession of a firearm, the jury needed to find that: (1) Defendant  
7 knowingly possessed a certain firearm and ammunition; (2) the firearm and  
8 ammunition had been shipped and transported from one state to another or between  
9 a foreign nation and the United States; and (3) at the time Defendant possessed the  
10 firearm, she had been convicted of a crime punishable by imprisonment for a term  
11 exceeding one year. ECF No. 151 at 22. In addition, the instruction informed the  
12 jury that Defendant stipulated that on or about the date of her arrest, she had  
13 previously been convicted of a crime punishable by imprisonment of a term  
14 exceeding one year. *Id.* On February 7, 2019, the jury found Defendant guilty of all  
15 but one charge, which had been dismissed prior to trial. ECF No. 153. Defendant is  
16 currently awaiting sentencing on these convictions.

17 Defendant filed the instant motion on October 15, 2019. In this motion,  
18 Defendant argues that she is entitled to a new trial on Count 4 of the Indictment  
19 under Federal Rule of Criminal Procedure 33 because of a change of law after her  
20 trial. Defendant argues that, under the new rule announced by the Supreme Court  
21 in *Rehaif*, the jury instruction on the elements of felon in possession of a firearm  
22 given at her trial was improper and justice requires a new trial.

### 23 **Standard**

24 Federal Rule of Criminal Procedure 33 provides that, upon a defendant's  
25 motion, the court may vacate any judgment and grant a new trial if justice so  
26 requires. Fed. R. Crim. P. 33(a). If the motion is based on newly discovered  
27 evidence, the motion must be filed within 3 years after the guilty verdict. Fed. R.  
28 Crim. P. 33(b)(1). A motion based on any other reason must be filed within

1 fourteen days after the entry of the guilty verdict. Fed. R. Crim. P. 33(b)(2). A  
2 motion for new trial “is directed to the discretion of the judge” and should be  
3 granted “only in exceptional cases in which the evidence preponderates heavily  
4 against the verdict.” *United States v. Mack*, 362 F.3d 597, 600 (9th Cir. 2004).

5 When considering a motion for a new trial, courts apply the plain error  
6 standards set forth in Federal Rule of Criminal Procedure 52(b). *United States v.*  
7 *Pelisamen*, 641 F.3d 399, 404 (9th Cir. 2011) (applying plain error standard where  
8 grounds for challenging a jury instruction arose between trial and the time of the  
9 motion due to a change in law). The plain error standard requires reversal where  
10 there has been (1) error (2) that is plain (3) that affects substantial rights and (4)  
11 where the error seriously affects the fairness, integrity, or public reputation of  
12 judicial proceedings. *Id.* (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)).

13 Defendant argues that the new rule announced by the Supreme Court of the  
14 United States in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), requires a new  
15 trial on Count 4 of the Indictment. In *Rehaif*, the Supreme Court held that, in order  
16 to convict, § 922(g) requires the Government prove that a person knew she  
17 possessed a firearm and that she knew of her prohibited status when she possessed  
18 the firearm. 139 S. Ct. at 2194. That is, the Government must prove that the  
19 defendant knew she was a person who had been convicted of a crime punishable  
20 by imprisonment for a term exceeding one year. Thus, under *Rehaif*, district courts  
21 must instruct juries on the Government’s twofold burden on proving a defendant’s  
22 mental state in order to convict under § 922(g).

23 Although *Rehaif* is still new precedent, the Ninth Circuit Court of Appeals  
24 provides some additional guidance on the mechanics of *Rehaif*. In *United States v.*  
25 *Benamor*, the Ninth Circuit held that a stipulation to one’s status as a felon and a  
26 court’s failure to give the proper instruction under *Rehaif* was not plain error  
27 requiring a new trial. 937 F.3d 1182, 1188 (9th Cir. 2019). There, the defendant  
28 filed a petition for rehearing, arguing that the evidence presented at his trial was

1 insufficient to sustain his conviction because the government failed to prove that  
2 he knew he was a felon. *Id.* However, the defendant stipulated at trial that, at the  
3 time he was arrested on the § 922(g) charge, he had been convicted of a crime  
4 punishable by imprisonment for a term exceeding one year. *Id.* Although the  
5 Circuit concluded that the absence of the instruction now required by *Rehaif* was  
6 error, it did not warrant a rehearing. *Id.* Rather, the Circuit concluded that, “[a]t a  
7 minimum, the [defendant’s] prior convictions for being a felon in possession of a  
8 firearm...proved beyond a reasonable doubt that [the defendant] had the  
9 knowledge required by *Rehaif* and that any error in not instructing the jury to make  
10 such a finding” did not affect the defendant’s substantial rights or the fairness of  
11 his trial. *Id.*

## 12 Analysis

13 Defendant argues that the change of law announced in *Rehaif* constitutes  
14 new evidence for purposes of Rule 33. Furthermore, the Government has agreed  
15 not to object to the timeliness of the motion based on the recentness of the *Rehaif*  
16 decision. *See* ECF No. 184 at 4, n.2 Thus, the Court must determine whether the  
17 failure to give the required *mens rea* instruction constitutes plain error requiring a  
18 new trial on Count 4 of the Indictment.

19 The Ninth Circuit’s holding in *Benamor* is binding on this case. At  
20 Defendant’s trial, the jury was not instructed that the Government must prove that  
21 Defendant knew she had been convicted of a crime punishable by imprisonment  
22 for a term exceeding one year. However, the jury was instructed that “Defendant  
23 stipulates on or about November 21, 2017, the Defendant had previously been  
24 convicted of a crime punishable by imprisonment for a term exceeding one year.”  
25 ECF No. 151 at 22. Stipulations are binding and relieve the Government of its  
26 burden to prove Defendant’s knowledge as to her status. *See Benamor*, 937 F.3d at  
27 1188 (citing *Christian Legal Soc’y Chapter of Univ. of Cal. v. Martinez*, 561 U.S.  
28 661, 677-78 (2010)). Even if the instruction required by *Rehaif* had been given, the

1 stipulation would have proven beyond a reasonable doubt that Defendant actually  
2 did have the required knowledge. It cannot be argued, then, that neither  
3 Defendant's substantial rights nor the fairness of the proceedings were affected.  
4 Therefore, a new trial on Count 4 of the Indictment is not warranted in this case.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant's Motion for a New Trial, ECF No. 184, is **DENIED**.

7 2. Defendant will be sentenced in this matter on **November 20, 2019** at  
8 **2:30 p.m.** in **Yakima**, Washington.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
10 and forward copies to counsel.

11 **DATED** this 8th day of November 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

18 Stanley A. Bastian  
19 United States District Judge  
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